

**IN THE HIGH COURT OF TANZANIA**  
**THE CORRUPTION AND ECONOMIC CRIMES DIVISION**  
**DAR ES SALAAM DISTRICT REGISTRY**

**MISC. ECONOMIC CAUSE NO. 12 OF 2018**

(Originating from Economic Crime Case No. 53 of 2017 of Resident  
Magistrate Court of Dar es Salaam at Kisutu)

<b>1. BENEDICT VINTUS KUNGWA</b> <b>2. JUMANNE RAMADHANI CHIMA @ JIZZO @ JK</b> <b>3. AHMED AMBARI NYAGONGO</b> <b>4. PIUS VICENT KULAGWA</b>	}	<b>... APPLICANTS</b>
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VERSUS

**THE REPUBLIC ..... RESPONDENT**

Date of Last Oder: - 19/06/2018

Date of Ruling: - 19/06/2018

**R U L I N G**

**W.B. KOROSSO, J**

Before the Court is an application filed by the applicants pursuant to section 29(4) (d) of the Economic and Organized Crime Control Act, Cap 200 RE 2002. Before the Court for Ruling is with regard to whether or not the Court should stay proceedings pending finalization of an appeal against a Ruling of this Court, initiated by the Respondent Republic. This prayer for

stay of proceeding of the hearing of the bail application was advanced by the Respondents Republic, through their counsel, Ms. Elizabeth Mkunde, Learned State Attorney, a prayer vehemently objected to by the learned counsel for the applicants, Mr. Josephat Mabula, learned Advocate.

It is important before we proceed to provide a bit of a background to this matter. Upon the lodging of an application for bail by the applicants, the respondents filed a counter affidavit together with a certificate issued by the Director of Public Prosecution, objecting to grant of bail to applicants vide section 36(2) of the Economic and Organized Crime Control Act, Cap 200 RE 2002. The applicants, through their counsel challenged the validity and competency of the said certificate. This Court, found that the certificate by the DPP objecting to grant of bail to the applicants was incompetent, finding that it failed to pass the validity test expounded by case law in a Ruling delivered on the 21st May 2018. Therefore ordered that the hearing of the application proceed without consideration of the said certificate.

Upon delivery of the said Ruling, the Respondents filed a notice of appeal to the Court of Appeal and informed the Court of the same. Upon the notice of appeal being filed, the Respondents prayed that proceedings for hearing of the application as ordered by this court be stayed pending determination of the intended appeal arguing that, proceeding with hearing will prejudice the rights of the respondents envisaged in the intended appeal to the Court of Appeal. In responding to the applicants' objection, the respondents argued the Court to be guided by Rule 68(1) of the Court of Appeal Rules 2009 which state that once a notice of appeal has been

filed, the notice of appeal institutes an appeal to the Court of Appeal. They also rejected the contention that the notice of appeal is premature since it is against a ruling regarding the certificate objecting to bail filed by the DPP and is therefore an interlocutory order arguing that the decision to reject the certificate is final order with regard to the competency and viability of the said certificate and therefore the respondents right to appeal cannot be questioned. The respondents also contended that the cited case by irrelevant to the matter at hand and distinguishable since it dealt with an appeal from a subordinate Court to the High Court and the contentious issue there was on interpretation of section 378(1) of the Criminal Procedure Act, Cap 20 RE 2002.

In challenging the respondent prayers for stay of proceedings, whilst acknowledging being served the notice of intention to appeal to the Court of Appeal by the respondents, the applicants counsel argued that such a notice does not automatically act as a stay of proceedings. That in any case the notice filed is premature with the intention to hinder and pre-empt the Court do deliberate and determine the bail application before the Court. That the proper procedure would have been for the respondents to wait until the bail application has been determined. It was thus the applicants prayer that the Court should not allow itself to be pre-empted and should proceed to hear and determine the bail application.

We have had time to scrutinize and consider the submissions from the counsels for the applicants and the respondents, and there is no doubt that the respondents have filed a notice of appeal to the court of appeal, and the notice is dated 24th May 2018. There is also the fact that, one cannot

challenge the fact that under section 6(2) of the Appellate Jurisdiction Act, Cap 141 RE 2002, the Director of Public Prosecutions if dissatisfied with any acquittal, sentence or order made or passed by the High Court or subordinate court exercising extended powers may appeal to the court of appeal against the acquittal, sentence or order as the case may be. Therefore, there is no doubt that the DPP by this provisions is empowered to appeal against any order of the High Court if dissatisfied. The contents and implications on section 6(2) of the Appellate Jurisdiction Act, Cap 141 was discussed in the case of **DPP vs. Farid Hadi Ahmed and 9 Others**, Criminal Appeal No. 96 of 2013 (Court of Appeal, Dar es Salaam) where it stated that;

*"the right of the D.P.P. to appeal against "any acquittal, sentence or order made or passed by the High Court or by a subordinate court exercising extended powers", was left unfettered by the total prohibition against appeals or revision applications to this Court in relation to any preliminary or interlocutory decision or order".*

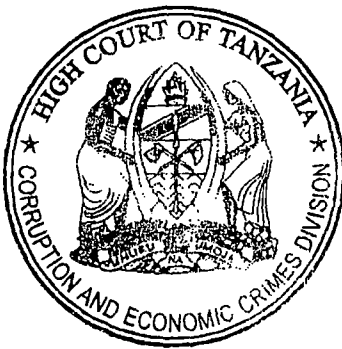
Therefore, from this it is clear, that where there is an order determining a matter, the DPP may appeal to Court of Appeal if dissatisfied and in the present case that is what the DPP has done by filing a notice of appeal to the Court of Appeal, a notice which cannot be disputed having been filed in this Court. This position can also be discerned from the observation of the Court of Appeal in the case of **Yohana Nyakibari & 22 others**, Criminal Reference No. 1 of 2006 (unreported), in respect of the reasons behind the passing of Act No. 25 of 2002.

There is also the fact that by virtue of Rule 68(1) of the Court of Appeal Rules 2009, provides that where a notice has been given in writing by any person who desires to appeal to the Court of Appeal at the place where the decision has been made against which it is desired to appeal, within thirty days of the date of that decision, the notice of appeal shall institute the appeal. It is clear that what this provision proclaims is that once a notice of appeal has been filed in compliance with the relevant provisions relating to filing a notice of appeal to the Court of Appeal, the notice of appeal shall institute the appeal.

We have carefully considered the applicants submission and relevance of the cited case of **Godbless Lema** (supra) to the present matter before the Court. The said case is a High Court case and therefore not binding but with persuasive value to this Court. In that case the Court of Resident Magistrate of Arusha, upon plea taking, the prosecution objected to grant of bail supported by an affidavit of SP George Katabazi, the RCO for Arusha on three grounds. First, that grant of bail will be against public interest, second, that the applicant had committed the offence while on bail in another criminal case and third, that if the accused is released on bail his security will be jeopardized. The Resident Magistrates court overruled the objections raised by the prosecution and proceeded to grant bail to the applicant. The prosecution then informed the Court that they intended to file a notice of appeal to the High Court and prayed for stay of proceedings pending determination of the appeal and the learned Magistrate granted the prayer and proceeded to order stay of proceedings pending determination of the appeal intended to be filed.

appeal, we find there is no other route to channel and the only available avenue is to grant the prayers by the respondents.

In the premises, we grant the prayers by the Respondent Republic and the proceedings before the Court relating to the bail application are hereby stayed pending determination of the appeal or any other Order of this Court. Ordered.



**Winfrida B. Korosso**  
**JUDGE**  
**19th June 2018**